

**MINUTES**

**NATIVE AMERICAN GRAVES PROTECTION AND  
REPATRIATION REVIEW COMMITTEE**

**TWENTY-EIGHTH MEETING  
TELECONFERENCE**

**NOVEMBER 2, 2004  
2:00 P.M. E.D.S.T.**

Remote Locations (National Park Service offices):

Headquarters Office  
1201 Eye Street NW  
Washington, DC

Northeast Regional Office  
15 State Street  
Boston, MA

Southeast Regional Office  
100 Alabama Street, SW  
Atlanta, GA

Mississippi National River and Recreation Area  
111 East Kellogg Blvd  
St. Paul, MN

Intermountain Regional Office  
12795 West Alameda Parkway  
Denver, CO

Midwest Regional Office  
601 Riverfront Drive  
Omaha, NE

Intermountain Regional Office  
2968 Rodeo Park Drive West  
Santa Fe, NM

Pacific West Regional Office  
111 Jackson Street  
Oakland, CA

Pacific West Regional Office  
909 First Avenue  
Seattle, WA

Alaska Regional Office  
Federal Building  
222 W. 7<sup>th</sup> Avenue  
Anchorage, AK

Pacific Island Support Office  
300 Ala Moana Boulevard  
Honolulu, HI

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## **Background**

The Native American Graves Protection and Repatriation Review Committee was established under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq., which was signed into law by President George Bush on November 16, 1990.

Per the Review Committee's charter –

“The duties of the Committee are solely advisory. Specifically, the Committee will be responsible for:

1. Monitoring and reviewing the implementation of the inventory and identification processes and repatriation activities required under sections 5, 6, and 7 of Public Law 101-601 to ensure a fair and objective consideration and assessment of all available relevant information and evidence;
2. Reviewing and making findings relating to the identity or cultural affiliation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, or the repatriation of such items, upon the request of any affected party;
3. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants, and Federal agencies or museums relating to the repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, including convening the parties to the dispute, if deemed desirable;
4. Compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for disposition of such remains;
5. Consulting with Indian tribes, Native Hawaiian organizations, and museums on matters pertaining to the work of the Committee affecting such tribes or organizations;
6. Consulting with the Secretary [of the Interior] in the development of regulations to carry out Public Law 101-601;
7. Performing such other related functions as the Secretary [of the Interior] may assign to the Committee;
8. Making recommendations, if appropriate, regarding future care of human remains, funerary objects, sacred objects, and objects of cultural patrimony which are to be repatriated; and
9. Submitting an annual report to Congress on the progress and any barriers encountered in carrying out the Committee responsibilities during the year.”

The Review Committee is organized and administered according to the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1994).

Per NAGPRA, Review Committee members are appointed by the Secretary of the Interior from nominations by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations.

The Review Committee reports to the Secretary of the Interior. Under the Review Committee's current charter, the Manager, National NAGPRA Program, National Park Service or a designee serves as the Designated Federal Officer (DFO), who oversees the activities of the Review Committee and with whom the National Park Service provides administrative and staff support to the Review Committee on behalf of the Secretary of the Interior.

Additional information about the Review Committee – including the Review Committee's charter, membership, meeting protocol, and dispute procedures – is available at the National NAGPRA Website, <http://www.cr.nps.gov/nagpra/> (click on “Review Committee”).

Notice of this Review Committee meeting was published in the Federal Register on October 15, 2004 (Vol. 69, No. 199, page 61265-61266).

## **The 28th Meeting of the Review Committee**

The 28th meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Ms. Rosita Worl at 2:00 p.m. e.d.s.t, Tuesday, November 2, 2004. The meeting was a teleconference with public access locations available in 11 cities (see Minutes, page 2).

Review Committee members in attendance –

Ms. Rosita Worl, Chair  
Mr. Garrick Bailey  
Mr. Willie Jones  
Mr. Dan Monroe  
Mr. Lee Staples  
Mr. Vincas Steponaitis

Designated Federal Officer in attendance –

Mr. Timothy McKeown, Program Officer, National NAGPRA Program

National Park Service/Department of the Interior staff in attendance –

Ms. Jan Matthews, Associate Director, Cultural Resources, National Park Service  
Ms. Sherry Hutt, Program Manager, National NAGPRA Program, National Park Service  
Ms. Mary Downs, Program Officer, National NAGPRA Program, National Park Service  
Ms. Martha Graham, Program Officer, National NAGPRA Program, National Park Service  
Ms. Paula Molloy, Program Officer, National NAGPRA Program, National Park Service  
Ms. Karen Mudar, Program Officer, National NAGPRA Program, National Park Service  
Ms. Cyndie Murdock, Program Officer, National NAGPRA Program, National Park Service  
Ms. Carla Mattix, Office of the Solicitor, Department of the Interior  
Ms. Lesa Hagel, Consultant (contract transcriptionist)

Persons in attendance during part or all of the meeting at the following remote locations (names and affiliations as provided at the meeting by attendees) –

### **Washington, DC**

Ms. Risa Arbolino, National Museum of Natural History, Smithsonian Institution  
Mr. Bill Billeck, National Museum of Natural History, Smithsonian Institution  
Ms. Mary Carroll, Archeology & Ethnography Program, National Park Service  
Mr. Eric Hollinger, National Museum of Natural History, Smithsonian Institution  
Mr. Bob Hyde, National Treasury Employees Union  
Mr. David Lindsay, Society for American Archaeology  
Ms. Nell Murphy, American Museum of Natural History

### **Boston, MA**

Ms. Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University  
Ms. Sandra Dong, Peabody Museum of Archaeology and Ethnology, Harvard University  
Ms. Christina Hodge, Peabody Museum of Archaeology and Ethnology, Harvard University  
Ms. Diana Loren, Peabody Museum of Archaeology and Ethnology, Harvard University  
Ms. Lauren Sieg, National Park Service/New Jersey State Museum  
Mr. Chuck Smythe, National Park Service

### **Atlanta, GA**

Mr. J. Anthony Paredes, National Park Service  
Ms. Ali Miri, National Park Service

#### St. Paul, MN

Mr. Michael J. Evans, National Park Service  
Ms. Jeneé Iyer, University of Chicago

#### Denver, CO

Ms. Cyd Martin, National Park Service  
Ms. Christine Landrum, National Park Service  
Mr. Dave Ruppert, National Park Service  
Ms. Bridget Ambler, Colorado Historical Society

#### Santa Fe, NM

Mr. Ed Natay, National Park Service

#### Oakland, CA

Mr. Roger Kelly, National Park Service  
Mr. Richard Hitchcock, Hearst Museum  
Ms. Sonia Tamez, U.S. Forest Service  
Mr. Edward Luby, San Francisco State Museum  
Rebecca Landes, University of California

#### Seattle, WA

Mr. Fred York, National Park Service

#### Anchorage, AK

Ms. Janet Cohen, National Park Service  
Mr. David Katzeek, Shangukeidi

#### Honolulu, HI

Mr. Edward Halealoha Ayau, Hui Malama I Na Kupuna O Hawaii Nei  
Mr. Van Horn Diamond, Van Horn Diamond Ohana  
Ms. Melia Lane-Kamahele, National Park Service  
Mr. Dutchie Kapu Saffery, Hawaii Burial Council  
Ms. Sally Apgar, Honolulu Star Bulletin  
Ms. Malia Baron, Bernice Pauahi Bishop Museum  
Ms. Jodi Yamamoto, Bernice Pauahi Bishop Museum  
Mr. DeSoto Brown, Bernice Pauahi Bishop Museum  
Ms. Keola Awong, National Park Service  
Mr. Jo Chu, Department of Hawaiian Home Lands  
Ms. Laura Schuster, National Park Service  
Ms. Vicki Viotti, Honolulu Advertiser  
Mr. La'akea Suganuma, Royal Hawaiian Academy of Traditional Arts

### **Introduction**

Ms. Worl asked for a roll call of the Review Committee members. Mr. David Katzeek, Clan Leader of the Shangukeidi, Alaska, provided the opening invocation. Mr. McKeown then gave a brief overview of the responsibilities of the Review Committee under the statute.

### **Review of Agenda**

Ms. Worl briefly reviewed the agenda.

## **Certification of Minutes of September 17-18, 2004**

Mr. Steponaitis proposed three substantive changes to the minutes of the September 17-18, 2004 meeting. Each change was discussed and agreed upon by the Review Committee members, with actual wording to reflect the language in the meeting transcript. Mr. McKeown stated the amended minutes would be signed by the Review Committee Chair and certified by the DFO, as required by FACA.

## **Update on Bishop Museum's Final NAGPRA Guidance**

Mr. McKeown stated that the Review Committee members were given a copy of the Bishop Museum's revised final guidance and a letter from Mr. McKeown to Ms. Malia Baron at the Bishop Museum acknowledging receipt of the revised final guidance. Mr. Monroe asked if the Bishop Museum had withdrawn their claim to be a Native Hawaiian organization through the revised guidance. Mr. McKeown stated that was his understanding.

## **Update on S. 2843**

Mr. McKeown stated that S. 2843 was introduced in the Senate. The following portion of the bill relates directly to NAGPRA. "Sec. 14, Amendment of Definition. Section 2(9) of Public Law 101-601 (25 U.S.C. 3001(9)) is amended by inserting 'or was' after 'is'." Ms. Mattix stated that the proposed change would essentially overrule the 9<sup>th</sup> Circuit decision in the Bonnicksen case. Mr. Monroe asked for a detailed analysis of the proposed change. Ms. Mattix explained that the Solicitor's Office could not provide a technical analysis because the DOI chose not to comment on the bill. Ms. Mattix stated that she could provide the Court opinions and the Department's brief on the case. Mr. Monroe stated that would be helpful.

## **Review of the Review Committee's 2002-2003 Report to Congress**

Mr. McKeown stated that the 2002-2003 draft report to Congress was included on the teleconference agenda because time constraints did not allow discussion of the report as scheduled at the September meeting. Mr. Steponaitis asked for clarification of the role of Review Committee members who were not on the Review Committee during the time represented by the report. Mr. McKeown stated that although its membership changes over time, the Review Committee is a continuous body. The current Review Committee members have a role in evaluating and approving the 2002-2003 report to Congress.

Mr. Steponaitis stated the report seemed to consist of two documents, the 2002-2003 report to Congress and the recommendations of the Review Committee dated September 18, 2004. Mr. McKeown stated that for the report to Congress, the Review Committee historically combined a summary of the status of implementation with a series of recommendations. Mr. Steponaitis stated that he felt the recommendations of the Review Committee would require more time for discussion than was available at the teleconference. Mr. Steponaitis suggested that the Review Committee concentrate on trying to finalize the report to Congress during the teleconference and postpone discussion of the recommendations.

Mr. Monroe asked what the requirements were for the Review Committee's report to Congress. Mr. McKeown stated the report is due annually. Mr. McKeown explained that Ms. Worl and Mr. Bailey prepared a draft report to Congress for 2002-2003, including recommendations of the Review Committee members during that time, for discussion at the September meeting. Time constraints at the September 2004 meeting necessitated postponement of discussion of the report. Mr. Monroe asked if a quick review of the recommendations during the teleconference would enable progress. Both Ms. Worl and Mr. Bailey agreed that discussion of the recommendations would require quite a bit of time.

Mr. Monroe recommended delaying the entire report in order to develop a cohesive and strong report to Congress, which included both an implementation update and the recommendations of the Review Committee. Ms. Worl suggested incorporating 2004 information to bring the report current. Mr. Monroe supported Ms. Worl's

recommendation and requested that the Review Committee members receive information detailing the rationale of the Review Committee regarding the recommendations. Mr. Steponaitis recommended that the Review Committee members consider the issue and develop a set of recommendations based on their discussion rather than considering a prepared set of recommendations. Mr. Jones and Mr. Staples each stated they would like further discussion on the topic at the following meeting. Mr. Steponaitis agreed to work with Mr. Bailey to draft the 2004 portion of the report to Congress for discussion at the upcoming meeting.

### **Consideration of Review Committee Nominations of a Seventh Member**

The Review Committee members discussed the process for nominations of the seventh Review Committee member. Ms. Vera Metcalf served as the seventh member since her appointment in 1998. Subsequent to her term expiration in June 2004, Ms. Metcalf voluntarily continued her service until the new appointment is made, as allowed under the Review Committee Charter. As required in the statute, the other six Review Committee members compile a list of nominations, from which the Secretary of the Interior selects the seventh member. Mr. McKeown stated that the Review Committee has historically held discussions where individual names are suggested, discussed, and upon unanimous agreement, included on the list of nominations for the Secretary's consideration.

The Review Committee members agreed to compile a list of names for consideration at the next Review Committee meeting. Review Committee members would add names to the list during the teleconference and by contacting Mr. McKeown through the end of November. Mr. McKeown would contact each suggested individual and determine his/her willingness to serve on the Review Committee. Each agreeable participant would then be asked to submit a curriculum vita and/or a one-page statement for consideration by the Review Committee members.

Ms. Worl stated that she would like to consider people who are Inupiaq, Yupik, or Aleut. Mr. Bailey stated that he would like to see representation from tribes in the Mississippi Valley and gulf coastal region. Mr. Steponaitis stated that he considered individuals who represented southeastern tribes, or were able to offer traditional backgrounds and/or museum and scientific backgrounds.

In chronological order during the teleconference, the following individuals were suggested for consideration (by Review Committee member):

1. Ms. Vera Metcalf, current Review Committee member, Nome, AK (Ms. Worl).
2. Mr. Timmy Thompson, Muskogee Creek Nation, Okmulgee, OK (Mr. Bailey).
3. Mr. Durbin Feeling, University of Oklahoma, Norman, OK (Mr. Bailey).
4. Mr. Kirk Perry, Chickasaw Nation of Oklahoma, Ada, OK (Mr. Steponaitis).
5. Mr. David Thomas, American Museum of Natural History, New York, NY (Mr. Steponaitis).
6. Ms. Patricia Lambert, Utah State University, Logan, UT (Mr. Steponaitis).
7. Mr. Sven Haakenson, Aleutic Museum, Kodiak, AK (Ms. Worl).
8. Mr. Gordon Pullar, Alaska Native and Rural Development Department, Anchorage, AK (Ms. Worl).
9. Ms. Lynne Goldstein, Michigan State University, East Lansing, MI (Mr. Steponaitis).
10. Mr. Leigh Kuwanwisiwma, Hopi Cultural Preservation Office, Kykotsmovi, AZ (Mr. Steponaitis).

### **Review of Revised Meeting Protocol**

Mr. McKeown stated that the Review Committee members agreed to two changes to the Meeting Protocol at the September meeting. The Review Committee members received copies of the revised Meeting Protocol document. Mr. McKeown summarized the changes, and the Review Committee members approved the revised Meeting Protocol document, which would be provided to the Chair for signature. Ms. Worl stated that the new Review Committee members have the option to review the document and raise any issues or concerns for discussion.

Mr. Steponaitis requested that the Review Committee members receive all background information well in advance of meetings. The Meeting Protocol calls for distribution of meeting materials at least 15 days prior to each meeting. Mr. Steponaitis stated that the Review Committee members received materials for both the September meeting and



the teleconference following the 15-day deadline. Mr. Steponaitis emphasized the importance of timely receipt of materials so members can be prepared to discuss the complex issues addressed by the Review Committee.

Mr. Steponaitis suggested that language be added to the Meeting Protocol to deal with situations where the Review Committee does not have all relevant data in a timely manner. Mr. McKeown stated that recent delays in information distribution were partly due to the new teleconference meeting format, which allows more timely discussion of issues, and partly due to the timing of documents published in the Federal Register, like the future applicability rule. Mr. McKeown stated that the Meeting Protocol could be amended to address the issue. Ms. Worl stated that draft language on this issue would be reviewed at the next meeting. Mr. Jones agreed with Mr. Steponaitis's suggestion and was in favor of discussing the issue at the next meeting. Ms. Worl requested that background material and any information related to items on Review Committee meeting agendas be distributed in written form in addition to electronic format.

### **Review of Proposed Future Applicability Rule**

Mr. McKeown stated that under 43 CFR 10.13, the future applicability section was reserved in the original regulation. Future applicability deals with situations occurring subsequent to the summary and inventory deadlines of 1993 and 1995. These situations include when an institution gets a new collection, a group receives acknowledgement as a federally recognized tribe, an institution receives Federal funds and is classified as a museum, or an institution changes a previously published decision. The rule sets timelines for actions relating from these situations. The proposed rule was published for public comment, with a deadline of January 18, 2005. The Review Committee as a whole could comment during the teleconference, and individual members could comment through the January 18, 2005 deadline.

Mr. Steponaitis stated that upon acknowledgement of a federally recognized Indian tribe, the proposed future applicability rule requires museums to act within a certain time limit. The only current method for notification of acknowledgement of new Indian tribes is through publication in the Federal Register. Mr. Steponaitis recommended other methods of notification be utilized to relieve the burden on museums to constantly monitor the Federal Register. Ms. Hutt stated that the Review Committee members could recommend additional language in the proposed future applicability rule requiring that the National NAGPRA Program maintain information on the Website for the acknowledgement of Indian tribes. Mr. Steponaitis stated that the NPS regularly uses a mailing list for museums that have submitted inventories and that NPS could notify these museums when the list of federally acknowledged Indian tribes is updated. Mr. Monroe recommended that the Review Committee raise this issue as a concern and ask the Department to address the concern.

### **Clarification of the Dispute Between the Royal Hawaiian Academy of Traditional Arts and the Bishop Museum**

Mr. Bailey acted as Chair of the Review Committee for discussion of this agenda item. Mr. McKeown described the materials provided to the Review Committee members for purposes of this discussion, including a letter to Mr. Kunani Nihipali outlining the findings of the Review Committee at the September meeting and documents provided early in the dispute that are relevant to constructing a rehearing of this issue.

Mr. Donald Duckworth, former president, director and CEO of Bishop Museum, stated that the Review Committee was provided documentation relevant to this dispute, including the April 12, 2001 letter from Mr. Duckworth to Mr. La'akea Sukanuma of the Royal Hawaiian Academy of Traditional Arts. The April 12, 2001 letter stated that in accordance and pursuant to the NAGPRA final rule, the materials under consideration were considered by the Bishop Museum to be repatriated to the 13 claimant groups, including transfer of legal interest. Mr. Bailey gave a brief review of the history of the dispute.

Mr. Steponaitis stated that in trying to determine the key issues before the Review Committee, he reviewed the minutes and correspondence, which contain allegations of procedural errors in the process that led to the Review Committee's finding and reference new information not considered during the Review Committee's discussions and finding. Mr. Bailey stated that one concern raised at the St. Paul meeting was that not all parties were represented at

the meeting. Mr. Bailey stated that the problem is a very broad problem with the implementation of NAGPRA in Hawaii and the ambiguity of what is meant by Native Hawaiian organizations.

Mr. Duckworth stated that NAGPRA implementation is difficult in Hawaii, partly due to the Act being written with tribal considerations in mind when Hawaii has no tribes. In the Act, two Native Hawaiian organizations are specifically named and included in every repatriation, the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawaii Nei. Mr. Duckworth stated that he feels the Bishop Museum followed the law very carefully and deliberately. A loan was made through the good faith efforts of the Bishop Museum staff, although perhaps the loan should not have been made. The Bishop Museum representative was assured that all claimants agreed that the loan should be made to one claimant so the materials could be relocated to a spiritually appropriate environment while the claimants deliberated on the most appropriate claimant for purposes of repatriation. When it was determined that the claimants had not agreed to the loan, the Bishop Museum set a timeline for the claimants to determine as a group whether the Bishop Museum should attempt to recover the items. Mr. Kaulukukui stated that the Bishop Museum received a letter from Mr. La'akea Sukanuma saying that the claimant groups could not reach agreement on final disposition and did not want the Bishop Museum to attempt recovery of the items. The Bishop Museum sent correspondence stating that they considered their moral and legal responsibility to be complete.

Mr. Steponaitis stated that two documents were important during the consideration of this issue, the published finding of the Review Committee in the Federal Register on August 20, 2003 and the Review Committee's procedures for making findings. The August 20, 2003 findings outline the key facts and timeline leading up to the dispute. Mr. Steponaitis reviewed the Dispute Procedures of the Review Committee and noted that the procedural requirement is that the DFO will inform all involved parties of the time and place of the meeting when the dispute will be considered and invite them to send representatives. The procedural requirement is notification, not presence. The Dispute Procedures also contain a provision for reconsideration of disputes upon demonstration of substantial new information. Mr. Steponaitis stated that these provisions might be a good basis for framing the discussion at the next meeting.

Mr. Monroe stated that he had several questions regarding this dispute; one, what was the rationale and basis of the majority opinion; two, what is the specific claim regarding the Bishop Museum's failure to follow NAGPRA procedures in this repatriation; three, to what extent does the Review Committee have authority to engage itself in attempts to resolve disputes between claimants; and four, confirmation of the Bishop Museum's consultation process after publication of the Notice of Intent to Repatriate in the Federal Register. Mr. Monroe was unclear of the relevance of the process and timelines prior to the Federal Register notice. Ms. Mattix reviewed the authority of the Review Committee under the statute.

Ms. Hutt stated that the rehearing of the dispute would involve the same parties, the Royal Hawaiian Academy of Traditional Arts and the Bishop Museum. The recommendations previously made by the Review Committee involved entities not party to the dispute. The Review Committee can make factual findings within its authority. At issue during the rehearing would be the jurisdiction and extent to which the Review Committee can make recommendations, which will affect the disputing parties and other entities.

Mr. Guy Kaulukukui suggested that when the Review Committee discusses the Bishop Museum and its actions that the Review Committee consider the leadership of the Bishop Museum at a specific period in time. Mr. Kaulukukui stated that the present leadership of the Bishop Museum was not the leadership who oversaw the repatriation of the items from the Kawaihae Caves complex. Soliciting information from the relevant leadership of the Bishop Museum would show how the museum faithfully followed NAGPRA in the repatriation to Kawaihae. Mr. Monroe stated that he supported a determination of whether or not the process was flawed and whether there was substance to the dispute between the Royal Hawaiian Academy of Traditional Arts and the Bishop Museum. Mr. McKeown stated that the Dispute Procedures of the Review Committee allow for appropriate consideration of disputes regarding whether cultural items fit the definition of human remains or other cultural items as specified by the statute, determination of the cultural affiliation of particular human remains or other items, determination of the ownership of particular human remains or other items, and appropriate disposition of human remains or other cultural items. Mr. McKeown stated that procedural issues, such as whether the Bishop Museum complied with the statute, could fall under different jurisdiction than the Review Committee, such as a court of competent jurisdiction.

Mr. Kaulukukui stated that from his understanding of the St. Paul meeting, the Review Committee did not actually hear a dispute, as the Bishop Museum did not defend itself. Rather, Mr. William Brown of the Bishop Museum and Mr. Sukanuma spoke before the Review Committee and indicated that they would work this matter out on their own. Ms. Hutt stated that at the Washington meeting the Review Committee requested that the Office of the Inspector General (IG) be informed that the Review Committee was holding its decision from the St. Paul meeting in abeyance, due to the impact of the findings on entities not party to the dispute. The IG instigated a criminal action against Hui Malama I Na Kupuna O Hawaii Nei following the Review Committee's findings at the St. Paul meeting. Subsequent to the Washington meeting, Ms. Hutt and Mr. McKeown discussed this issue with the IG.

Ms. Worl stated that she offered a minority opinion in September during the Review Committee's discussion of the dispute. Ms. Worl stated that Mr. Duckworth and Mr. Kaulukukui, in their comments at the teleconference, reaffirmed her understanding that the Bishop Museum followed the law in terms of publishing and consultation regarding the repatriation. Ms. Worl stated that in her opinion repatriation had occurred and was final, and any dispute should have been among the claimants insofar as disposition and should not have involved the Bishop Museum.

The Review Committee members agreed to rehear the dispute between the Royal Hawaiian Academy of Traditional Arts and the Bishop Museum. The dispute will center on the Royal Hawaiian Academy of Traditional Arts and the Bishop Museum as parties to the dispute. However, since the findings of the Review Committee may impact the other claimants, they should be present and be allowed to provide additional information. Mr. Monroe asked for clarification on procedural matters with respect to the Bishop Museum and how it carried out repatriation in this instance. Mr. McKeown asked whether the agenda could be developed in a step fashion; first, a determination on the completion of repatriation by the Bishop Museum, and then alternate discussions depending on the outcome of the initial determination. Mr. Monroe agreed, as long as the Review Committee members were given the opportunity to review the process prior to the meeting.

The Review Committee members discussed which member would chair the discussion at the Hawaii meeting. Ms. Worl stated she recused herself as Chair because she offered the minority opinion during the initial consideration of the dispute. Mr. Bailey stated that he felt Ms. Worl could chair the discussion despite the minority opinion. Mr. Monroe agreed that Ms. Worl could chair the discussion. Due to time constraints, Mr. McKeown recommended that the issue be decided between the teleconference and the meeting in Hawaii, and the Review Committee members agreed.

### **Discussion of Upcoming Review Committee Meetings**

Mr. McKeown stated that prior to the teleconference the Review Committee members each indicated availability to meet March 13, 14, and 15, 2005 in Hawaii. Potential meeting sites include Kona and Honolulu, and the DFO and Chair will consult on a meeting location. Mr. McKeown asked the Review Committee members to consider possible locations for the fall 2005 meeting and reminded them of the invitation by the Tri-Regional Indian Organization (TRIO) of Ohio. Ms. Worl raised the possibility of a meeting in the Southwest, subsequent to a previous commitment by the Review Committee to meet in Albuquerque. The DFO and Chair will consult on the fall 2005 meeting location and timing following the teleconference.

### **Public Comment**

Ms. Patricia Capone, speaking on behalf of the Peabody Museum of Archaeology and Ethnology, Harvard University, thanked the Review Committee for the opportunity to participate. Commenting on the proposed future applicability rule, section C, relating to new Indian tribes, Ms. Capone stated that assistance in making information on newly acknowledged Indian tribes widely available would assist in compliance. Ms. Capone stated that the information on the National NAGPRA Website has been very helpful and might be one method of information distribution for newly acknowledged Indian tribes. Ms. Capone stated that the Peabody Museum of Archaeology and Ethnology would comment formally on the rule, but she wanted to second the idea raised by Mr. Steponaitis.

Regarding the database of culturally unidentifiable human remains, Ms. Capone stated the Peabody Museum of Archaeology and Ethnology has not received a copy of the database information for verification. Ms. Capone stated that she has heard general concern regarding the quality of information in the database. Ms. Capone expressed concern about the feasibility of completing the verification process within the given timeframe. Ms. Capone noted that the database included associated funerary objects and thought it might be useful to include information in the database introduction clarifying the reason for inclusion of the associated funerary objects.

Ms. Hutt expressed appreciation for Ms. Capone's comments and will fully consider Ms. Capone's suggestion regarding the inclusion of associated funerary objects in the database. Ms. Hutt stated that Ms. Murdock continues to work on the database, with the assistance of an intern. Ms. Hutt explained that some of the comments received on the database relate to the data fields and arrangement, which cannot be changed. Any typographical errors or data entry glitches would be corrected.

Mr. Steponaitis stated that the University of North Carolina received a copy of its database information and during the verification process substantive errors were found. Work is ongoing to correct the errors with updated information. Mr. Steponaitis stated that the NPS sent the information with a letter stating that the museum has 30 days to submit corrections or the information will be posted as is on the database. Mr. Steponaitis expressed concern about this practice, and stated that despite the museum staff's best efforts, the corrected information may not be finalized by the deadline. Mr. Steponaitis stated that inaccurate information would not be beneficial and recommended that the NPS not post inventories for any institution until verification was complete. Mr. Steponaitis recommended that a new deadline be determined which provides institutions with sufficient time for review. Ms. Hutt stated the Mr. Steponaitis's comments would be given full consideration.

Mr. Edward Halealoha Ayau, Hui Malama I Na Kupuna O Hawai'i Nei, addressed the Review Committee regarding the dispute between the Royal Hawaiian Academy of Traditional Arts and the Bishop Museum. Mr. Ayau stated that the central issue in the dispute, as stated by Dr. Worl and Dr. McKeown, was whether the repatriation was final because that determines whether or not the Review Committee should entertain the dispute. While unresolved issues may remain, the central question was whether the Review Committee was the appropriate forum to resolve the issue. Hui Malama I Na Kupuna O Hawai'i Nei's position was that a court of competent jurisdiction has primary jurisdiction over procedural issues. If the Review Committee decides to proceed with the dispute, Hui Malama I Na Kupuna O Hawai'i Nei agreed that the dispute that should be considered was the one filed by the Royal Hawaiian Academy of Traditional Arts and the Bishop Museum. Mr. Ayau stated that such review would be appropriate since the Review Committee's findings and recommendations are nonbinding, but only if the relief that the Review Committee fashions does not undermine or negatively affect the ownership interests of the other 12 organizations.

Mr. Ayau stated that Hui Malama I Na Kupuna O Hawai'i Nei was in the process of fashioning a dispute against the Bishop Museum for failure to comply with NAGPRA and refusing to repatriate three moepu, funerary objects, from Molokai. Mr. Ayau requested that the issue be placed on the March agenda and that the meeting in Hawaii be held on Molokai.

Mr. Ayau stated that the Review Committee has not had a Native Hawaiian member and offered Mr. Ray Soon for consideration. Mr. Ayau seconded Mr. Steponaitis's recommendation to consider Mr. David Thomas, as well as Ms. Worl's recommendation to consider Ms. Metcalf and Mr. Gordon Pullar. Mr. Ayau recommended Ms. Lane Beck, Arizona State Museum, University of Arizona, for consideration. Ms. Worl stated that the Review Committee would consider Mr. Ayau's comments.

Mr. Van Horn Diamond, Van Horn Diamond Ohana, agreed to submit his statement in writing to the Review Committee, due to time constraints. Ms. Worl expressed her apologies to Mr. Diamond and her appreciation for his willingness to submit his statement in writing.

## **Meeting Adjournment**

The meeting adjourned at 5:25 p.m. e.d.s.t., on Tuesday, November 2, 2004.

Certified –

/s/ C. Timothy McKeown

Mr. Timothy McKeown,

Designated Federal Officer, Native American Graves

Protection and Repatriation Review Committee

February 2, 2005

Date

Approved on behalf of the Review Committee –

/s/ Rosita Worl

Ms. Rosita Worl

Chair, Native American Graves

Protection and Repatriation Review Committee

January 28, 2005

Date